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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10 SOUTHERN DIVISION
11

12 TIFFANY TABARES, individually and
13 as successor-in-interest to Dillan
14 Tabares,

15 Plaintiff,

16 vs.

17 CITY OF HUNTINGTON BEACH;
18 ERIC ESPARZA, an individual; and
19 DOES 1-10, inclusive,

20 Defendants.
21

Case No. 8:18-cv-00821 JLS (JDEx)

22 **STIPULATED PROTECTIVE
23 ORDER**

24 1. PURPOSES AND LIMITATIONS

25 Discovery in this action is likely to involve production of confidential,
26 proprietary or private information for which special protection from public
27 disclosure and from use for any purpose other than pursuing this litigation may be
28 warranted. Accordingly, the parties hereby stipulate to and petition the Court to
enter the following Stipulated Protective Order. The parties acknowledge that this

1 Order does not confer blanket protections on all disclosures or responses to
2 discovery and that the protection it affords from public disclosure and use extends
3 only to the limited information or items that are entitled to confidential treatment
4 under the applicable legal principles.

5 2. GOOD CAUSE STATEMENT

6 Defendants contend that there is good cause and a particularized need for a
7 protective order to preserve the interests of confidentiality and privacy in peace
8 officer personnel file records and associated investigative or confidential records for
9 the following reasons.

10 First, Defendants contend that peace officers have a federal privilege of
11 privacy in their personnel file records: a reasonable expectation of privacy therein
12 that is underscored, specified, and arguably heightened by the *Pitchess* protective
13 procedure of California law. *See Sanchez v. Santa Ana Police Dept.*, 936 F.2d 1027,
14 1033-1034 (9th Cir. 1990); *Hallon v. City of Stockton*, 2012 U.S. Dist. LEXIS
15 14665, *2-3, 12-13 (E.D. Cal. 2012) (concluding that “while “[f]ederal law applies
16 to privilege based discovery disputes involving federal claims,” the “state privilege
17 law which is consistent with its federal equivalent significantly assists in applying
18 [federal] privilege law to discovery disputes”); *Soto v. City of Concord*, 162 F.R.D.
19 603, 613 n. 4, 616 (N.D. Cal. 1995) (peace officers have constitutionally-based
20 “privacy rights [that] are not inconsequential” in their police personnel records); cf.
21 Cal. Penal Code §§ 832.7, 832.8; Cal. Evid. Code §§ 1040-1047. Defendants
22 further contend that uncontrolled disclosure of such personnel file information can
23 **threaten the safety of non-party witnesses, officers, and their**
24 **families/associates.**

25 Second, Defendants contend that municipalities and law enforcement
26 agencies have federal deliberative-executive process privilege, federal official
27 information privilege, federal law enforcement privilege, and federal attorney-client
28 privilege (and/or attorney work product protection) interests in the personnel files of

1 their peace officers – particularly as to those portions of peace officer personnel files
2 that contain critical self-analysis, internal deliberation/decision-making or
3 evaluation/analysis, or communications for the purposes of obtaining or rendering
4 legal advice or analysis – potentially including but not limited to
5 evaluative/analytical portions of Internal Affairs type records or reports,
6 evaluative/analytical portions of supervisory records or reports, and/or reports
7 prepared at the direction of counsel, or for the purpose of obtaining or rendering
8 legal advice. *See Sanchez*, 936 F.2d at 1033-1034; *Maricopa Audubon Soc’y v.*
9 *United States Forest Serv.*, 108 F.3d 1089, 1092-1095 (9th Cir. 1997); *Soto*, 162
10 F.R.D. at 613, 613 n. 4; *Kelly v. City of San Jose*, 114 F.R.D. 654, 668-671 (N.D.
11 Cal. 1987); *Tuite v. Henry*, 181 F.R.D. 175, 176-177 (D. D.C. 1998); *Hamstreet v.*
12 *Duncan*, 2007 U.S. Dist. LEXIS 89702 (D. Or. 2007); *Admiral Ins. Co. v. United*
13 *States Dist. Ct.*, 881 F.2d 1486, 1492, 1495 (9th Cir. 1988). Defendants further
14 contend that such personnel file records are restricted from disclosure by the public
15 entity’s custodian of records pursuant to applicable California law and that
16 uncontrolled release is likely to result in needless intrusion of officer privacy;
17 impairment in the collection of third-party witness information and statements and
18 related legitimate law enforcement investigations/interests; and a chilling of open
19 and honest discussion regarding and/or investigation into alleged misconduct that
20 can erode a public entity’s ability to identify and/or implement any remedial
21 measures that may be required.

22 Third, Defendants contend that, since peace officers do not have the same
23 rights as other private citizens to avoid giving compelled statements, it is contrary to
24 the fundamental principles of fairness to permit uncontrolled release of officers’
25 compelled statements. *See generally Lybarger v. City of Los Angeles*, 40 Cal.3d
26 822, 828-830 (1985); cf. U.S. Const., amend V.

27 Finally, recent amendments to state law enacted by Senate Bill 1421, do not
28 diminish the fundamental privacy interests in the categories of material described

1 above. The information required to be released pursuant to Senate Bill 1421 is
2 subject to strict redaction requirements, whereby the information available under
3 Senate Bill 1421 is not coextensive with the information available through a
4 *Pitchess* motion for discovery. *See* Cal. Pen. Code § 832.7(b)(5). Moreover, the
5 statute expressly provides that it “does not affect the discovery of disclosure of
6 information” pursuant to the statutory *Pitchess* procedure for discovery.

7 Accordingly, Defendants contend that, without a protective order preventing
8 such, dissemination of confidential records in the case can and will likely
9 substantially impair and harm defendant public entity’s interests in candid self-
10 critical analysis, frank internal deliberations, obtaining candid information from
11 witnesses, preserving the safety of witnesses, preserving the safety of peace officers
12 and peace officers’ families and associates, protecting the privacy officers of peace
13 officers, and preventing pending investigations from being detrimentally
14 undermined by publication of private, sensitive, or confidential information – as can
15 and often does result in litigation.

16 In addition, Defendants contend that there is good cause and a particularized
17 need for a protective order to preserve the interests of confidentiality and privacy for
18 records of an investigation into a homicide of a third party, which is relevant to this
19 action. *See Nat’l Archives & Records Admin. v. Favish*, 541 U.S. 157, 166 (2004)
20 (“Law enforcement documents obtained by Government investigators often contain
21 information about persons interviewed as witnesses or initial suspects but whose
22 link to the official inquiry may be the result of mere happenstance. There is special
23 reason, therefore, to give protection to this intimate personal data, to which the
24 public does not have a general right of access in the ordinary course.... In this class
25 of cases where the subject of the documents ‘is a private citizen,’ ‘the privacy
26 interest... is at its apex.’”) (quoting *United States Dept. of Justice v. Reporters*
27 *Comm. for Freedom of Press*, 489 U.S. 749, 780 (1989)). Of particular concern are
28 the third party privacy rights of the homicide victim’s family with regard to

1 information and photographs of the victim. *Id.* at 167-69; Cal. Civil Proc. Code §
2 129. Accordingly, Defendants contend that, without a protective order preventing
3 such, dissemination of confidential records in the case can and will likely
4 substantially impair and harm third party privacy interests.

5 Plaintiff does not agree with and does not stipulate to Defendants' contentions
6 herein above, and nothing in this Stipulation or its associated Order shall resolve the
7 parties' disagreement, or bind them, concerning the legal statements and claimed
8 privileges and privacy interests set forth above.

9 However, Plaintiff agrees that there is Good Cause for a Protective Order so
10 as to preserve the respective interests of the parties without the need to further
11 burden the Court with such issues. Specifically, the parties jointly contend that,
12 absent this Stipulation and its associated Protective Order, the parties' respective
13 privilege and/or privacy interests, and/or privacy interests of third parties, may be
14 impaired or harmed, and that this Stipulation and its associated Protective Order
15 may avoid such harm by permitting the parties to facilitate discovery with reduced
16 risk that privileged and/or sensitive/confidential information will become matters of
17 public record.

18 The parties jointly contend that there is typically a particularized need for
19 protection as to any medical or psychotherapeutic records and autopsy photographs,
20 because of the privacy interests at stake therein. Because of these sensitive interests,
21 a Court Order should address these documents rather than a private agreement
22 between the parties.

23 The parties therefore stipulate that there is Good Cause for, and hereby jointly
24 request that the honorable Court issue/enter, a Protective Order re: confidential
25 documents consistent with the terms and provisions of this Stipulation. However,
26 the entry of a Protective Order by the Court pursuant to this Stipulation shall not be
27 construed as any ruling by the Court on the aforementioned legal statements or
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1 privilege claims in this section (§ 2), nor shall this section be construed as part of
2 any such Court Order.

3 3. ACKNOWLEDGMENT OF UNDER SEAL FILING PROCEDURE

4 The parties further acknowledge, as set forth in Section 14.3, below, that this
5 Stipulated Protective Order does not entitle them to file confidential information
6 under seal; Local Civil Rule 79-5 sets forth the procedures that must be followed
7 and the standards that will be applied when a party seeks permission from the court
8 to file material under seal. There is a strong presumption that the public has a right
9 of access to judicial proceedings and records in civil cases. In connection with non-
10 dispositive motions, good cause must be shown to support a filing under seal. See
11 Kamakana v. City and County of Honolulu, 447 F.3d 1172, 1176 (9th Cir. 2006),
12 Phillips v. Gen. Motors Corp., 307 F.3d 1206, 1210-11 (9th Cir. 2002), Makar-
13 Welbon v. Sony Electronics, Inc., 187 F.R.D. 576, 577 (E.D. Wis. 1999) (even
14 stipulated protective orders require good cause showing), and a specific showing of
15 good cause or compelling reasons with proper evidentiary support and legal
16 justification, must be made with respect to Protected Material that a party seeks to
17 file under seal. The parties' mere designation of Disclosure or Discovery Material as
18 CONFIDENTIAL does not— without the submission of competent evidence by
19 declaration, establishing that the material sought to be filed under seal qualifies as
20 confidential, privileged, or otherwise protectable—constitute good cause.

21 Further, if a party requests sealing related to a dispositive motion or trial, then
22 compelling reasons, not only good cause, for the sealing must be shown, and the
23 relief sought shall be narrowly tailored to serve the specific interest to be protected.
24 See Pintos v. Pacific Creditors Ass'n., 605 F.3d 665, 677-79 (9th Cir. 2010). For
25 each item or type of information, document, or thing sought to be filed or introduced
26 under seal, the party seeking protection must articulate compelling reasons,
27 supported by specific facts and legal justification, for the requested sealing order.
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1 Again, competent evidence supporting the application to file documents under seal
2 must be provided by declaration.

3 Any document that is not confidential, privileged, or otherwise protectable in
4 its entirety will not be filed under seal if the confidential portions can be redacted. If
5 documents can be redacted, then a redacted version for public viewing, omitting
6 only the confidential, privileged, or otherwise protectable portions of the document,
7 shall be filed. Any application that seeks to file documents under seal in their
8 entirety should include an explanation of why redaction is not feasible.

9 4. DEFINITIONS

10 4.1 Action: *Tiffany Tabares v. City of Huntington Beach, et al.*, United
11 States Central District Court Case No..8:18-cv-00821 JLS (JDEx).

12 4.2 Challenging Party: a Party or Non-Party that challenges the designation
13 of information or items under this Order.

14 4.3 “CONFIDENTIAL” Information or Items: information (regardless of
15 how it is generated, stored or maintained) or tangible things that qualify for
16 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
17 the Good Cause Statement.

18 4.4 Counsel: Outside Counsel of Record and House Counsel (as well as
19 their support staff).

20 4.5 Designating Party: a Party or Non-Party that designates information or
21 items that it produces in disclosures or in responses to discovery as
22 “CONFIDENTIAL.”

23 4.6 Disclosure or Discovery Material: all items or information, regardless
24 of the medium or manner in which it is generated, stored, or maintained (including,
25 among other things, testimony, transcripts, and tangible things), that are produced or
26 generated in disclosures or responses to discovery.

27 4.7 Expert: a person with specialized knowledge or experience in a matter
28 pertinent to the litigation who has been retained by a Party or its counsel to serve as

1 an expert witness or as a consultant in this Action.

2 4.8 House Counsel: attorneys who are employees of a party to this Action.
3 House Counsel does not include Outside Counsel of Record or any other outside
4 counsel.

5 4.9 Non-Party: any natural person, partnership, corporation, association or
6 other legal entity not named as a Party to this action.

7 4.10 Outside Counsel of Record: attorneys who are not employees of a party
8 to this Action but are retained to represent a party to this Action and have appeared
9 in this Action on behalf of that party or are affiliated with a law firm that has
10 appeared on behalf of that party, and includes support staff.

11 4.11 Party: any party to this Action, including all of its officers, directors,
12 employees, consultants, retained experts, and Outside Counsel of Record (and their
13 support staffs).

14 4.12 Producing Party: a Party or Non-Party that produces Disclosure or
15 Discovery Material in this Action.

16 4.13 Professional Vendors: persons or entities that provide litigation support
17 services (e.g., photocopying, videotaping, translating, preparing exhibits or
18 demonstrations, and organizing, storing, or retrieving data in any form or medium)
19 and their employees and subcontractors.

20 4.14 Protected Material: any Disclosure or Discovery Material that is
21 designated as "CONFIDENTIAL."

22 4.15 Receiving Party: a Party that receives Disclosure or Discovery
23 Material from a Producing Party.

24 5. SCOPE

25 The protections conferred by this Stipulation and Order cover not only
26 Protected Material (as defined above), but also (1) any information copied or
27 extracted from Protected Material; (2) all copies, excerpts, summaries, or
28 compilations of Protected Material; and (3) any testimony, conversations, or

1 presentations by Parties or their Counsel that might reveal Protected Material.

2 Any use of Protected Material at trial shall be governed by the orders of the
3 trial judge and other applicable authorities. This Order does not govern the use of
4 Protected Material at trial.

5 6. DURATION

6 Once a case proceeds to trial, information that was designated as
7 CONFIDENTIAL or maintained pursuant to this protective order used or introduced
8 as an exhibit at trial becomes public and will be presumptively available to all
9 members of the public, including the press, unless compelling reasons supported by
10 specific factual findings to proceed otherwise are made to the trial judge in advance
11 of the trial. See Kamakana, 447 F.3d at 1180-81 (distinguishing “good cause”
12 showing for sealing documents produced in discovery from “compelling reasons”
13 standard when merits-related documents are part of court record). Accordingly, the
14 terms of this protective order do not extend beyond the commencement of the trial.

15 7. DESIGNATING PROTECTED MATERIAL

16 7.1 Exercise of Restraint and Care in Designating Material for
17 Protection. Each Party or Non-Party that designates information or
18 items for protection under this Order must take care to limit any such designation to
19 specific material that qualifies under the appropriate standards. The Designating
20 Party must designate for protection only those parts of material, documents, items or
21 oral or written communications that qualify so that other portions of the material,
22 documents, items or communications for which protection is not warranted are not
23 swept unjustifiably within the ambit of this Order.

24 Mass, indiscriminate or routinized designations are prohibited. Designations
25 that are shown to be clearly unjustified or that have been made for an improper
26 purpose (e.g., to unnecessarily encumber the case development process or to impose
27 unnecessary expenses and burdens on other parties) may expose the Designating
28 Party to sanctions.

1 If it comes to a Designating Party's attention that information or items that it
2 designated for protection do not qualify for protection, that Designating Party must
3 promptly notify all other Parties that it is withdrawing the inapplicable designation.

4 7.2 Manner and Timing of Designations. Except as otherwise provided in
5 this Order, or as otherwise stipulated or ordered, Disclosure of Discovery Material
6 that qualifies for protection under this Order must be clearly so designated before
7 the material is disclosed or produced.

8 Designation in conformity with this Order requires:

9 (a) for information in documentary form (e.g., paper or electronic
10 documents, but excluding transcripts of depositions or other pretrial or trial
11 proceedings), that the Producing Party affix at a minimum, the legend
12 "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"), to each page that
13 contains protected material. If only a portion of the material on a page qualifies for
14 protection, the Producing Party also must clearly identify the protected portion(s)
15 (e.g., by making appropriate markings in the margins).

16 A Party or Non-Party that makes original documents available for inspection
17 need not designate them for protection until after the inspecting Party has indicated
18 which documents it would like copied and produced. During the inspection and
19 before the designation, all of the material made available for inspection shall be
20 deemed "CONFIDENTIAL." After the inspecting Party has identified the
21 documents it wants copied and produced, the Producing Party must determine which
22 documents, or portions thereof, qualify for protection under this Order. Then, before
23 producing the specified documents, the Producing Party must affix the
24 "CONFIDENTIAL legend" to each page that contains Protected Material. If only a
25 portion of the material on a page qualifies for protection, the Producing Party also
26 must clearly identify the protected portion(s) (e.g., by making appropriate markings
27 in the margins).

28 (b) for testimony given in depositions that the Designating Party identifies

1 the Disclosure or Discovery Material on the record, before the close of the
2 deposition all protected testimony.

3 (c) for information produced in some form other than documentary and for
4 any other tangible items, that the Producing Party affix in a prominent place on the
5 exterior of the container or containers in which the information is stored the legend
6 “CONFIDENTIAL.” If only a portion or portions of the information warrants
7 protection, the Producing Party, to the extent practicable, shall identify the protected
8 portion(s).

9 7.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
10 failure to designate qualified information or items does not, standing alone, waive
11 the Designating Party’s right to secure protection under this Order for such material.
12 Upon timely correction of a designation, the Receiving Party must make reasonable
13 efforts to assure that the material is treated in accordance with the provisions of this
14 Order.

15 8. CHALLENGING CONFIDENTIALITY DESIGNATIONS

16 8.1. Timing of Challenges. Any Party or Non-Party may challenge a
17 designation of confidentiality at any time that is consistent with the Court’s
18 Scheduling Order.

19 8.2 Meet and Confer. The Challenging Party shall initiate the dispute
20 resolution process under Local Rule 37-1 et seq.

21 8.3 Joint Stipulation. Any challenge submitted to the Court shall be via a
22 joint stipulation pursuant to Local Rule 37-2.

23 8.4 The burden of persuasion in any such challenge proceeding shall be on
24 the Designating Party. Frivolous challenges, and those made for an improper
25 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
26 parties) may expose the Challenging Party to sanctions. Unless the Designating
27 Party has waived or withdrawn the confidentiality designation, all parties shall
28 continue to afford the material in question the level of protection to which it is

entitled under the Producing Party's designation until the Court rules on the challenge.

9. ACCESS TO AND USE OF PROTECTED MATERIAL

9.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Non-Party in connection with this Action only for prosecuting, defending or attempting to settle this Action. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order. When the Action has been terminated, a Receiving Party must comply with the provisions of section 15 below (FINAL DISPOSITION).

Protected Material must be stored and maintained by a Receiving Party at a location and in a secure manner that ensures that access is limited to the persons authorized under this Order.

9.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated "CONFIDENTIAL" only to:

(a) the Receiving Party's Outside Counsel of Record in this Action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this Action;

(b) the officers, directors, and employees (including House Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this Action;

(c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this Action and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A).

(d) the court and its personnel;

(e) court reporters and their staff;

(f) professional jury or trial consultants, mock jurors, and Professional

Vendors to whom disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information;

(h) during their depositions, witnesses, and attorneys for witnesses, in the Action to whom disclosure is reasonably necessary provided: (1) the deposing party requests that the witness sign the form attached as Exhibit A hereto; and (2) they will not be permitted to keep any confidential information unless they sign the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material may be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order; and

(i) any mediators or settlement officers and their supporting personnel, mutually agreed upon by any of the parties engaged in settlement discussions.

10. PROTECTED MATERIAL SUBPOENAED OR ORDERED
PRODUCED IN OTHER LITIGATION

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this Action as “CONFIDENTIAL,” that Party must:

(a) promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected. If the

1 Designating Party timely seeks a protective order, the Party served with the
2 subpoena or court order shall not produce any information designated in this action
3 as “CONFIDENTIAL” before a determination by the court from which the
4 subpoena or order issued, unless the Party has obtained the Designating Party’s
5 permission. The Designating Party shall bear the burden and expense of seeking
6 protection in that court of its confidential material and nothing in these provisions
7 should be construed as authorizing or encouraging a Receiving Party in this Action
8 to disobey a lawful directive from another court.

9 11. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO
10 BE PRODUCED IN THIS LITIGATION

11 (a) The terms of this Order are applicable to information produced by a
12 Non-Party in this Action and designated as “CONFIDENTIAL.” Such information
13 produced by Non-Parties in connection with this litigation is protected by the
14 remedies and relief provided by this Order. Nothing in these provisions should be
15 construed as prohibiting a Non-Party from seeking additional protections.

16 (b) In the event that a Party is required, by a valid discovery request, to
17 produce a Non-Party’s confidential information in its possession, and the Party is
18 subject to an agreement with the Non-Party not to produce the Non-Party’s
19 confidential information, then the Party shall:

20 (1) promptly notify in writing the Requesting Party and the Non-
21 Party that some or all of the information requested is subject to a confidentiality
22 agreement with a Non-Party;

23 (2) promptly provide the Non-Party with a copy of the Stipulated
24 Protective Order in this Action, the relevant discovery request(s), and a reasonably
25 specific description of the information requested; and

26 (3) make the information requested available for inspection by the
27 Non-Party, if requested.

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1 (c) If the Non-Party fails to seek a protective order from this court within
2 14 days of receiving the notice and accompanying information, the Receiving Party
3 may produce the Non-Party's confidential information responsive to the discovery
4 request. If the Non-Party timely seeks a protective order, the Receiving Party shall
5 not produce any information in its possession or control that is subject to the
6 confidentiality agreement with the Non-Party before a determination by the court.
7 Absent a court order to the contrary, the Non-Party shall bear the burden and
8 expense of seeking protection in this court of its Protected Material.

9 12. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

10 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
11 Protected Material to any person or in any circumstance not authorized under this
12 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
13 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts
14 to retrieve all unauthorized copies of the Protected Material, (c) inform the person or
15 persons to whom unauthorized disclosures were made of all the terms of this Order,
16 and (d) request such person or persons to execute the "Acknowledgment and
17 Agreement to Be Bound" attached hereto as Exhibit A.

18 13. INADVERTENT PRODUCTION OF PRIVILEGED OR
19 OTHERWISE PROTECTED MATERIAL

20 When a Producing Party gives notice to Receiving Parties that certain
21 inadvertently produced material is subject to a claim of privilege or other protection,
22 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
23 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
24 may be established in an e-discovery order that provides for production without
25 prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar
26 as the parties reach an agreement on the effect of disclosure of a communication or
27 information covered by the attorney-client privilege or work product protection, the
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1 parties may incorporate their agreement in the stipulated protective order submitted
2 to the court.

3 14. MISCELLANEOUS

4 14.1 Right to Further Relief. Nothing in this Order abridges the right of any
5 person to seek its modification by the Court in the future.

6 14.2 Right to Assert Other Objections. By stipulating to the entry of this
7 Protective Order, no Party waives any right it otherwise would have to object to
8 disclosing or producing any information or item on any ground not addressed in this
9 Stipulated Protective Order. Similarly, no Party waives any right to object on any
10 ground to use in evidence of any of the material covered by this Protective Order.

11 14.3 Filing Protected Material. A Party that seeks to file under seal any
12 Protected Material must comply with Local Civil Rule 79-5. Protected Material may
13 only be filed under seal pursuant to a court order authorizing the sealing of the
14 specific Protected Material. If a Party's request to file Protected Material under seal
15 is denied by the court, then the Receiving Party may file the information in the
16 public record unless otherwise instructed by the court.

17 15. FINAL DISPOSITION

18 After the final disposition of this Action, as defined in paragraph 6, within 60
19 days of a written request by the Designating Party, each Receiving Party must return
20 all Protected Material to the Producing Party or destroy such material. As used in
21 this subdivision, "all Protected Material" includes all copies, abstracts, compilations,
22 summaries, and any other format reproducing or capturing any of the Protected
23 Material. Whether the Protected Material is returned or destroyed, the Receiving
24 Party must submit a written certification to the Producing Party (and, if not the same
25 person or entity, to the Designating Party) by the 60-day deadline that (1) identifies
26 (by category, where appropriate) all the Protected Material that was returned or
27 destroyed and (2) affirms that the Receiving Party has not retained any copies,
28 abstracts, compilations, summaries or any other format reproducing or capturing any

1 of the Protected Material. Notwithstanding this provision, Counsel are entitled to
2 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing
3 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
4 reports, attorney work product, and consultant and expert work product, even if such
5 materials contain Protected Material. Any such archival copies that contain or
6 constitute Protected Material remain subject to this Protective Order as set forth in
7 Section 6 (DURATION).

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1 **Exhibit A**

2 **Acknowledgement and Agreement to Be Bound**

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4 I, _____, do solemnly swear that I am fully
5 familiar with the terms of the Protective Order entered in this action, *Tiffany*
6 *Tabares v. City of Huntington Beach, et al.*, United States Central District Court
7 Case No..8:18-cv-00821 JLS (JDEx), and I hereby agree to comply with and be
8 bound by the terms and conditions of the said Protective Order with respect to the
9 handling, use and disclosure of any Confidential Information. I understand and
10 acknowledge that I may be subject to penalties for contempt of Court if I violate
11 said Protective Order and hereby consent to the jurisdiction of said Court for
12 purposes of enforcing said Protective Order.

13 I declare under penalty of perjury under the laws of the State of California
14 and of the United States that the foregoing is true and correct.

15
16 Date: _____

17 Name: _____

18 Signature: _____

19 Category of Authorized Recipient Under Section 9.2 of Protective Order:

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